

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Lempert, et. Al. Analyst: Marion Mann DeJong Bill Number: AB 1614

Related Bills: AJR 20, SB 1908 Telephone: (916) 845-6979 Amended Date: 07/09/98

Attorney: Doug Bramhall Sponsor: _____

SUBJECT: California Internet Tax Freedom Act

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY OF BILL

This bill would enact the "California Internet Tax Freedom Act," prohibiting, with specified exceptions, any city, county, or city and county from imposing, assessing or attempting to collect taxes relating to Internet access and Online Computer Services.

Under the Sales and Use Tax Law, this bill would codify the decisions of recent court cases and modify the repeal date for the provision exempting the taking of orders from customers in this state through a computer telecommunications network from the definition of "engaged in business in this state." This provision of the bill does not impact the programs administered by the department.

SUMMARY OF AMENDMENT

The July 9, 1998, amendments removed the urgency provision from the bill, added legislative declarations, modified definitions, modified the moratorium on taxes relating to Internet access and Online Computer Services and changed the repeal date of the moratorium from five to three years.

The Background and current law discussion of Specific Findings in the department's analysis for the bill as amended May 27, 1998, still apply. The remainder of the May 27, 1998, analysis and all other analyses for the bill are replaced with the following.

EFFECTIVE DATE

This bill would become effective on January 1, 1999. This bill specifies that the California Internet Tax Freedom Act would become inoperative three years from the effective date of this bill.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Ralph Shoemaker

7/27/98

SPECIFIC FINDINGS

This bill would enact the "California Internet Tax Freedom Act." This Act would prohibit any city, county, or city and county from imposing, assessing or attempting to collect any of the following:

- A tax on Internet access, Online Computer Services, or the use of Internet access or any Online Computer Services.
- A bit tax or bandwidth tax.
- Any discriminatory tax on Online Computer Services or Internet access.

This prohibition against the imposition of taxes would not apply to any new or existing tax of general application (including any sales and use tax, business license tax, or utility user tax) that is imposed or assessed in a uniform and nondiscriminatory manner without regard to whether the activities or transactions taxed are conducted through the use of the Internet, Internet access, or Online Computer Services.

The bill would provide that a cable television franchise fee may not be imposed on Online Computer Services or Internet access delivered over a cable television system, if the Federal Communications Commission by final order, or a court of competent jurisdiction rendering a judgment enforceable in California, finds that those are not cable services, as defined, and therefore not subject to a franchise fee. However, if that final order or judgment is overturned or modified by further administrative, legislative, or judicial action, that action shall control. This provision may be suspended if a cable television franchising authority and a cable television operator enter a contract allowing the imposition of a franchise fee.

The bill would provide definitions for Internet, Online Computer Services, Internet access, franchise fee, discriminatory, bit tax and bandwidth tax.

The bill would make legislative findings and declarations that California is not currently imposing any discriminatory taxes on Internet access or Online Computer Services and intends that no existing or future taxes or fees be imposed by the state in a discriminatory manner upon Internet access or Online Computer Services. In addition, the bill would declare that no local government is currently imposing and presently collecting any tax on Internet access or Online Computer Services that is discriminatory within the meaning of the Act.

The bill also would specify that it is not intended to interfere with existing sources of revenue that provide funding for local government services. It is intended to impose a moratorium on new taxes imposed on Internet access and Online Computer Services and the discriminatory application of existing or new taxes to Internet access or Online Computer Services. Nothing in the bill should be interpreted as precluding the imposition or collection of new or existing taxes of general application that are imposed or assessed in a uniform and nondiscriminatory manner.

Implementation Considerations

Implementation of this bill would occur during the department's normal annual system update.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

Tax Revenue Estimate

This bill would not significantly impact Personal Income Tax or Bank and Corporation Tax revenues.

BOARD POSITION

Pending.

The Franchise Tax Board voted at its July 21, 1997, meeting to support this bill as amended July 3, 1997, but the current Board has not considered the bill as amended.